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October 23, 2012

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

**Re: Brad Crabtree, Candidate for North Dakota State Public Service
Commissioner – Federal Election Commission Complaint by North Dakota
Republican Party Treasurer Robert Harms;
MUR 6663**

Dear Mr. Jordan:

As documented by the enclosed Statement of Designation of Counsel, I have been retained to represent the following entities and to present the instant response in opposition to the above-referenced Federal Election Commission (FEC) complaint dated September 28, 2012, which was made by North Dakota Republican Party Treasurer Robert Harms:

1. North Dakota State Public Service Commission candidate Brad Crabtree;
2. Crabtree for Public Service Commission; and
3. Perry Miller, Treasurer, Crabtree for Public Service Commission

All three of these entities have been named jointly in the Harms complaint, and no separate allegations are made as to any of these entities individually within the text of that complaint.

Reduced to the essentials, Harms in his complaint to the FEC alleges that a radio advertisement which was broadcast on various North Dakota radio stations on various dates from August 8, 2012, through September 30, 2012, constituted an "electioneering communication" which "does not qualify for the exemption available to state or local candidates" See, the FEC complaint dated September 28, 2012, as made by North Dakota Republican Treasurer Robert Harms, a copy of which being attached hereto as "Exhibit 1" for reference.¹

¹ Specifically, the Harms GOP complaint claims that the referenced 30-second radio spot supposedly is an "electioneering communication", and that because Democratic state Public Service Commission candidate Brad Crabtree and his campaign did not file Federal Election Commission Form 9 [24 Hour

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A. Material facts which were omitted in the Harms GOP complaint

Although the four-paragraph Harms complaint incorporates by reference a transcript of the subject 30-second Crabtree for Public Service Commission radio advertisement Harms declines to inform the FEC in his complaint of any of the factual context of the exclusively state North Dakota Public Service Commission campaign within which the Crabtree radio advertisement was aired.

Specifically, Harms fails to advise the FEC of the fact that Kevin Cramer is a sitting Republican incumbent (*in the middle of a term*) on the three-member North Dakota Public Service Commission – the agency which regulates and adjudicates cases relating to essentially all public utilities in the state – including electric power, telephone, pipeline, grain elevator, among other utilities.

From the outset of the current state Public Service Commission campaign, Democratic candidate Brad Crabtree has made an issue out of that which Crabtree has termed a “culture of corruption” on the part of Republican incumbent PSC Commissioners Kevin Cramer and Brian Kalk – principally because of Cramer’s and Kalk’s practices of accepting political campaign contributions from individuals and entities which had – *and continue to have* – interests in “imminent or pending” administrative proceedings – including adjudicative cases – before the North Dakota PSC. See, e.g., the multiple press releases and news media stories extending from April 11, 2012, through October 5, 2012, which are posted on the Brad Crabtree for Public Service Commission website – www.crabtreeforpsc.com [the individual press statement of this subject can be accessed by “clicking” on the subject heading entitled “Issues”, and scrolling down to the subheading “PSC Corruption”] – copies of which hereto and incorporated herein as referenced as “Exhibit 2”.

This “culture of corruption” has been a “signature issue” of the Crabtree campaign for state PSC – and it should be emphasized that PSC Commissioner Kevin Cramer has always been identified by Brad Crabtree in his current official capacity as a Commissioner of the North Dakota Public Service Commission – **never as a candidate for federal office.**²

Notice of Disbursements/Obligations of Electioneering Communications] after having exceeded the “\$10,000 aggregate disclosure threshold -- that Crabtree and his campaign allegedly had violated federal election law.

² During the course of the current state campaign for North Dakota Public Service Commission, Brad Crabtree has called specific attention to N.D.C.C. § 12.1-12-01(3), which Crabtree has asserted was violated by both Republican PSC Commissioners Brian Kalk and Kevin Cramer. In making this charge, Crabtree has focused upon these two public officials’ actions in accepting political campaign contribution money from individuals which had interests in “imminent or pending” “administrative proceeding(s)” before the PSC. This is a Class C Felony criminal statute entitled “Bribery”. See, NDCC § 12.1-12-01(1) and NDCC § 12.1-12-01(3), a copy of which statute is attached hereto as “Exhibit 3” for reference. See, also, Crabtree for PSC press releases and media stories, copies of which are posted on the Crabtree for PSC website, and are also attached hereto together as “Exhibit 2”.

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Significantly, at no time has Brad Crabtree or his campaign ever referred to Kevin Cramer in his capacity or status as a candidate for the federal office of a member of the United States Congress. It is clear that nowhere within the text of the transcript of the Crabtree for Public Service Commission radio spot – and nowhere within the press releases and media stories relating to corrupt political contribution money-taking conduct on the parts of sitting Republican PSC Commissioners Kevin Cramer and Brian Kalk – is there any mention or reference by Crabtree to the fact that Cramer is running for Congress. Indeed, reference to PSC incumbent Commissioner Brian Kalk is made along with Cramer in virtually all press releases and media stories in which Cramer is mentioned. *See, the materials attached hereto as "Exhibit 2".* Correspondingly, the transcript of the 30-second Crabtree for Public Service Commissioner radio spot also mentions PSC Commissioner Brian Kalk in the lone sentence in which PSC Commissioner Kevin Cramer is mentioned.

To be clear, the campaign theme and important message conveyed by Brad Crabtree as a state office candidate long predated the 60-day time judicial window referenced in the Harms GOP complaint.

B. Brad Crabtree's North Dakota state campaign for Public Service Commission is itself exclusively governed by North Dakota law

It is clear that jurisdiction of the Federal Election Campaign Act (FECA) regulates federal elections only, and this federal legislation does not suggest that the authority of the Federal Election Commission reaches beyond federal elections and into the realm of state elections – and it is beyond serious question that different statutory and regulatory frameworks govern campaign finance and federal and state elections. *See, 2 U.S.C. § 453(a). See, also, e.g., Emily's List v. Federal Election Commission*, 569 F. Supp.2d 18, 44 (D.C. 2008), *reversed on other grounds*, 581 F.3d 1 (D.C. Cir. 2009) [the Federal Election Campaign Act (FECA) "regulates federal elections only," and does not suggest that the (Federal Election) Commission's jurisdiction 'reach(es) beyond federal elections and into the realm of state elections.'"] quoting from *Common Cause v. Federal Election Commission*, 692 F. Supp. 1391, 1395 (D.C. 1987); *Federal Election Commission v. California Democratic Party*, 2004 U.S. Dist. LEXIS 7269, *2 (E.D. Cal. February 13, 2004) ["Different statutory and regulatory frameworks govern campaign finance in federal and state elections."].

C. The provisions of 2 U.S.C. § 431 (2)(A)(III), 11 C.F.R. § 100.24(b)(3), 2 U.S.C. § 441(f)(2) – and the FEC regulatory exemption of 11 U.S.C. § 100.29(c)(5)

Notwithstanding the foundational legal principal law that the FECA regulates federal elections only, and that FEC jurisdiction does not reach beyond federal elections and into the realm of state elections – it is evident from appropriate interpretation and

construction of relevant statutory and regulatory provisions that the actions of state Public Service Commission candidate Brad Crabtree were not violative of federal election law.

Firstly, 2 U.S.C. § 431(20)(A)(iii) provides in this "Definitions" statute that the term "Federal election activity" only "means . . . (iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that federal office (regardless of whether the communication expressly advocates a vote for or against a candidate)". (emphasis added). See, also, the parallel FEC regulation containing essentially the same language, 11 CFR § 100.24(b)(3).

It is clear from reading the transcript of the Crabtree for Public Service Commission 30-second radio spot that Brad Crabtree never attacked or opposed Kevin Cramer as a federal candidate for the United States House of Representatives. Brad Crabtree never mentioned the fact that Cramer was running for Congress, and never implied that Cramer was a candidate for federal office.

Nevertheless -- and alternatively, in that which is perhaps the most compelling statutory provision in repudiation of the position adopted by the Harms GOP complaint -- 2 U.S.C. § 441(f)(2) entitled "State candidate" provides that, "(2) Exception for certain communications. Paragraph (1) [relating to "(a) candidate for state and local office . . . or an agent of such a candidate or individual"] shall not apply to an individual described in such paragraph if the communication involved is in connection with an election for such State or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both." (emphasis added).³

On the basis of the foregoing Paragraph 3, *supra*, it is respectfully submitted no further recitation of authority or argument is necessary to justify and warrant immediate dismissal of the Harms GOP complaint against North Dakota Public Service Commission candidate Brad Crabtree, his campaign committee, and campaign treasurer.

³ It must be emphasized that while the provisions of 2 U.S.C. § 431(20)(A)(iii) are cross-referenced in 2 U.S.C. § 441(f)(1) -- 2 U.S.C. § 431(20)(A)(iii) decidedly is NOT cross-referenced in 2 U.S.C. § 441(f)(2) -- the latter being an "Exception" under which "Paragraph (1) [relating to "(a) candidate for state and local office . . . or an agent of such a candidate or individual"] shall not apply to an individual described in such paragraph if the communication involved is in connection with an election for such State or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both." (emphasis added). To the extent that FEC regulation 11 C.F.R. § 300.72 goes "off the ranch", by disregarding the statutory distinction provided by the statutory "Exception" of 2 U.S.C. § 441(f)(2), by impermissibly and improperly including language taken from 2 U.S.C. § 431(20)(A)(iii) -- language which is expressly excepted by 2 U.S.C. § 441(f)(2) from application to a communication "in connection with an election for such State or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both." (emphasis added).

It is clear from reading the transcript of the Crabtree for Public Service Commission 30-second radio spot that this radio advertisement: (1) was a communication "in connection with an election for such State or local office"; which (2) referred "only to such individual or to any other candidate for the State or local office held or sought by such individual, or both." (emphasis added).

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However, to the extent that the discussion of an additional exemption relative to 2 U.S.C. § 431(20)(A)(iii) is even necessary – given the fact that 2 U.S.C. § 441i (f)(2) excepts that former statute from application to a factual setting such that which exists in the instant case, an additional exemption does apply – *alternatively and consecutively* – so as to exempt the respondents from culpability as well.

Following the passage of the Bipartisan Campaign Reform Act of 2002 [Pub. L. No. 107-155, 116 Stat. 81 (2002)] – the FEC promulgated an exemption to the definition of "electioneering communication" – exempting communications paid for by candidates for state or local office where the mention of a federal candidate is "merely incidental", thus not being in violation of Section 301(20)(A)(iii) of FECA. See, the discussion of "Electioneering Communications", at 67 Fed. Reg. at 65,198-99, codified at 11 C.F.R. § 100.29(c)(5). See, also, *McCannell v. Federal Election Commission*, 251 F.Supp.2d 176, 592 n.128 (D.D.C. 2003), *affirmed in part and reversed in part*, 540 U.S. 93 (2003).

Under this explanation, under the facts attendant to the Brad Crabtree radio spots at issue, any unmentioned connotation or inference, relative to Kevin Cramer's candidacy for federal office as a member of Congress, is, at the very most, a "merely incidental" non-mention of a federal candidate – let alone being a "merely incidental" mention of a federal candidate.⁴

⁴ The history of the promulgation of 11 C.F.R. § 100.29(c)(5) by the FEC in its proposed new regulations back in 2002, included the following explanation published in the Federal Register, 67 Fed. Reg. at 65,198-99 as follows:

11 C.F.R. § 100.29(c)(5) Exemption for State and Local Candidates

The Commission proposed an exemption in the NPRM that would cover communications by State and local candidates and officeholders that refer to a clearly identified Federal candidate, provided that mention of a Federal candidate is merely incidental to the candidacy of one or more individuals for State or local office. 67 F.R. § 51,136. For example, under this approach, an ad for a State or local candidate that featured such candidate's views on education would not have been rendered an electioneering communication if the ad were to indicate whether the candidate supported or opposed the President's education policy.

Four commenters thought the Commission's formulation of such an exemption was vague, subject to abuse, not supported by BCRA, and therefore beyond the Commission's exemption authority. Nonetheless, these same commenters supported an alternative formulation that exempts communications by State or local candidates or State or local political parties that refer to clearly identified Federal candidates, provided the communications do not promote, support, attack or oppose a Federal candidate. By using that standard, the commenters believed the exemption would also serve to harmonize the operation of Title I and subtitle A of Title II of BCRA as they apply to State and local parties and their candidates.

Title I of BCRA permits State, district, or local party committees, organizations, or their candidates to use non-Federal funds for communications that clearly identify a Federal candidate, but do not promote, support, attack, or oppose any Federal candidate. See 2 U.S.C. § 431(20)(A)(iii) and 11 C.F.R. § 100.24(b)(3) (defining Federal election activity to include only those public communications that promote, support, attack or oppose a clearly identified Federal candidate); 2 U.S.C. § 441i(b)(1) and 11 C.F.R. § 300.32(a)(1) (association of State office candidates or incumbents required to use Federal funds for Federal election activity); 2 U.S.C. § 441i(b)(1) and 11 C.F.R. § 300.32(a)(2) (same for State, district, and local party committees); 2 U.S.C. § 441i(f)(1) and 11 C.F.R. § 300.71 (State and local candidates

Clearly, under the attendant factual circumstances of the instant case involving Brad Crabtree, a candidate for the state office of North Dakota Public Service Commissioner – who has made the corrupt -- *even criminal* -- political campaign money-taking actions of the Republican incumbent PSC Commissioner Brian Kalk and Kevin Cramer a legitimate and compelling "signature issue" of his state campaign -- where Crabtree has never mentioned or described Commissioner Cramer as a candidate for *federal* office -- there clearly has been no surreptitious scheme of an "attack" upon or "opposition" to the federal office candidacy of Kevin Cramer.

Without serious question, the regulatory exemption 11 C.F.R. § 100.29(c)(5) must be construed to exempt a legitimate, non-federal-office-directed statements of state PSC Commission candidate Brad Crabtree -- statements which justifiably

required to use Federal funds for a communication that does promote, support, attack or oppose a Federal candidate). Therefore, according to these commenters, absent an exemption, if a State, district, or local party committee, organization, or a State or local candidate creates and distributes a radio or television communication that refers to a clearly identified Federal candidate, but does not promote, support, attack or oppose any Federal candidate, and is not otherwise a contribution or expenditure, Title I of BCRA would permit the use of non-Federal funds to pay for that communication. However, if the same communication were publicly distributed and met the timing and targeting requirements of subtitle A of Title II, then the communication would also be an electioneering communication, so the use of corporate or labor organization funds to pay for it would be prohibited by subtitle A of Title II. According to these commenters, this inconsistent result is contrary to the intention of Title I in permitting the use of non-Federal funds for these purposes. Additionally, the principal Congressional sponsors argue that "effectively tak[ing] state candidates and parties out of the Title II prohibitions and reporting requirements . . . is consistent with the purposes of BCRA."

The Commission agrees that an exemption for State and local candidates that is within the parameters of 2 U.S.C. § 434(f)(3)(B)(iv) is appropriate in order to harmonize Title I and subtitle A of Title II of BCRA. Accordingly, the final rules include an exemption from the definition of "electioneering communication" for communications that are not described in 2 U.S.C. § 431(2)(A)(iii) and that are paid for by State or local candidates in connection with an election to State or local office. See 11 C.F.R. § 100.29(c)(5). Thus, this exemption covers public communications by State and local candidates that do not promote, support, attack, or oppose federal candidates. See new 11 C.F.R. § 300.72 exempting these communications from certain requirements of Title I of BCRA.

In contrast, however, State and local candidates making public communications that satisfy the description set forth in 2 U.S.C. § 431(2)(A)(iii) (i.e. public communications by State and local candidates that promote, support, attack, or oppose Federal candidates), are governed by Title I of BCRA and not by subtitle A of Title II of BCRA. Thus, under 2 U.S.C. § 441(f), 11 C.F.R. § 100.5(a), and 11 C.F.R. § 300.71, these communications must be paid for with Federal funds meeting the limits, prohibitions, and reporting requirements of the Act, including the contribution limits set forth at 2 U.S.C. § 441a(a)(1)(C) applicable to political committees that are not the authorized campaign committees of Federal candidates. The reporting obligations of State and local candidates making communications promoting, supporting, attacking, or opposing federal candidates are governed by a number of provisions depending on the exact nature of the communications and the persons making them. See, e.g., 11 C.F.R. § 300.36(a) (associations and groups of State and local candidates that are not political committees), 11 C.F.R. § 300.36(b) (associations and groups of State and local candidates that are political committees), 11 C.F.R. § 300.71 (individuals who are State or local candidates), and 2 U.S.C. § 434(g) (any person who makes an independent expenditure)." (***b**old, underlined, italicized emphasis added*).

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highlighted the corrupt conduct of incumbent Republican PSC Commissioners Brian Kalk and Kevin Cramer.

Indeed, if Kevin Cramer were to be defeated by Democrat Pam Guleson in the current federal campaign for North Dakota's only seat in the United States House of Representatives, assuredly Cramer will continue in his current mid-term status as one of the three members of the North Dakota Public Service Commission.

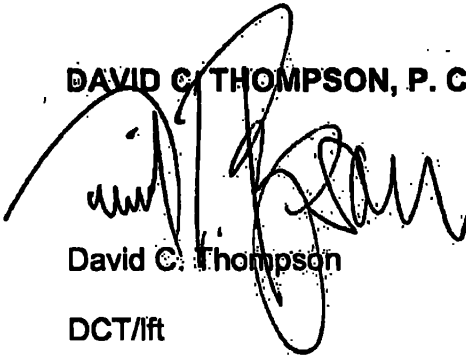
The absurd construction that the current Harms GOP complaint would place upon Brad Crabtree's exclusively state office-directed statements would never survive First Amendment scrutiny – and it should not be countenanced by the Federal Election Commission.⁵

The foundational position manifested by the Harms GOP complaint that incumbent PSC Commissioner Kevin Cramer somehow could be permitted to effectively "muzzle" state PSC Commission candidate Brad Crabtree as Crabtree carries out his campaign for state office – merely by virtue of the fact that Cramer fortuitously happens to be simultaneously running for the United States Congress – is an abhorrent concept which should be conclusively rejected by the FEC in these proceedings.

Indeed, the provisions of 2 U.S.C. § 441i(f)(2) clearly except these "certain communications" from the operation of 2 U.S.C. § 441i(f)(1), as it references 2 U.S.C. § 431(20)(A)(iii).

On the basis of the foregoing recitation of facts, legal authority, and argument, it is respectfully submitted that the Harms GOP complaint should be immediately dismissed.

DAVID C. THOMPSON, P. C.



David C. Thompson

DCT/ft

**legal research and writing assistance provided by Erik Escarramán, J.D.

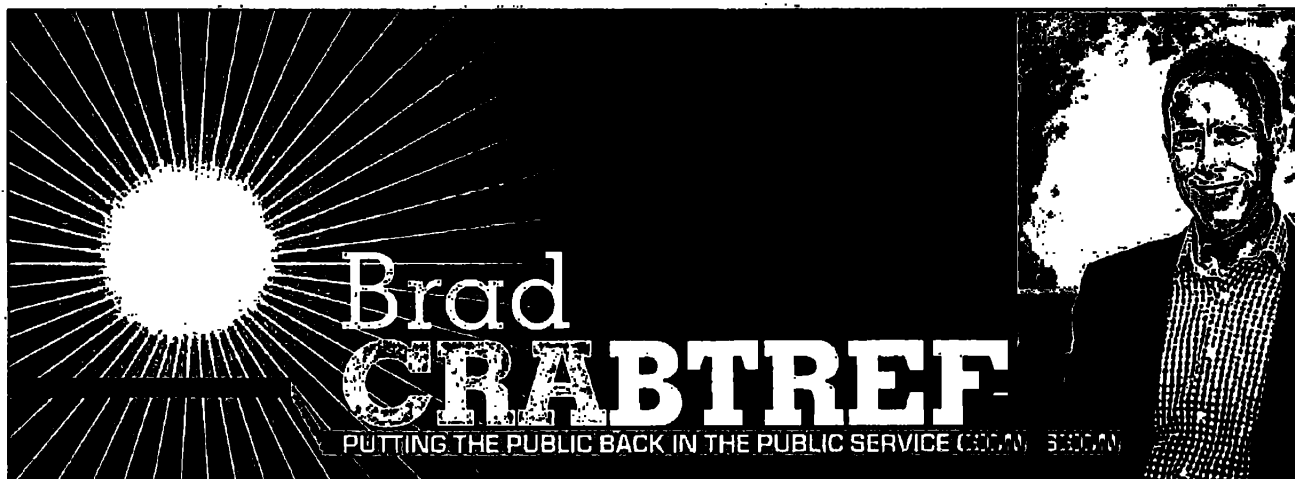
⁵ See, generally, *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

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Exhibit "1"

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Exhibit "2"



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[Contribute](#)**Christmann Must Disclose His Campaign Contributions And Explain Them Under North Dakota's Bribery Law**

Post Date October 05, 2012

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ASHLEY, N.D.) — Throughout the campaign, my opponent Randy Christmann has failed to grasp even obvious conflicts of interest for a PSC commissioner.

He boasted this week at a lignite coal industry forum that he would never join me in refusing campaign contributions from PSC-regulated interests:

Christmann also continues to serve on boards of regulated entities and, in one case, receives significant financial compensation, while openly running for the office that regulates them. He told the [Fargo Forum](#) in August that, if elected PSC commissioner, he would resign from the board of West River Telecom for reasons of time, but not because it would be a major conflict of interest. West River Telecom is regulated by the PSC.

This is odd behavior for a candidate who reassuringly cites "following the law" as one of the one of the cornerstones of his campaign. Christmann needs to explain whether his commitment to follow the law includes North Dakota's bribery statute (NDCC 12.1-12-01), which establishes a Class C felony for a public official who accepts a contribution from someone with an interest in an immediate or pending proceeding that could be affected by that official's decision.

Thousands of North Dakotans have begun early voting, with county auditors and the Secretary of State reporting record ballot requests. Unfortunately, voters are casting those ballots in the Public Service Commission race without knowing who has contributed Randy Christmann's campaign. Under our state's lax election laws, he must only report his contributions just days before the general election.

By contrast, I have voluntarily reported all my contributions in excess of \$200 on my campaign website for six months in a row. North Dakota voters can see whether I am honoring my pledge not to accept any campaign contributions from interests regulated by the PSC.

Commissioners Kevin Cramer and Brian Kalk have raised the PSC in federal lawsuits over tens of thousands of dollars in campaign contributions they have taken from the very interests they regulate and whose projects they approve. They are now stiffing taxpayers with their legal bills and putting our state's regulatory program for coal mining and reclamation at risk.

Given this sorry state of affairs, Randy Christmann should immediately disclose his campaign contributors during this early voting period. North Dakotans deserve to know now, before they vote, whether Christmann will continue the same corrupt practice of taking money from the very interests he would regulate on the PSC.

It's time for Christmann to show voters that he understands the role and ethical responsibilities of PSC commissioner by disclosing his campaign contributions and explaining those contributions in the context of North Dakota's bribery law.

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Industry donations to ND Public Service Commission widespread

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By Marino Eccher, INFORUM

Published August 17, 2012

<http://www.inforum.com/event/article/id/371336/>

BISMARCK – NextEra energy needed approval for a wind farm. BNI Coal was facing penalties for environmental rules. The Arthur Companies needed a license for a grain elevator.

All of them went before the North Dakota Public Service Commission to state their cases.

And all of them, whether via political action committees or campaign contributions from executives, have given the commissioners money. They're joined by dozens of other companies, similarly overseen by the commission, that collectively have funneled tens of thousands of dollars to commissioners.

The contributions, which technically are amalgamated individual donations, not corporate coffers, are legal. Commissioners say the money does not affect their work or win the companies undue influence.

But the issue of cozy ties between regulators and industry has become a flashpoint in this year's commission race, pitting those who say the system isn't broken against a reform-minded candidate who decries it as corrupt.

A review by The Forum of known PSC donations tied to regulated industries shows that the practice – whatever one thinks of it – is indeed extensive.

A common practice

The candidate raising the issue, energy policy consultant and environmental advocate Brad Crabtree, a Democrat, has gone hard in particular at two of the commissioners on the three-person board: Kevin Cramer and Brian Kalk, who are both Republicans.

To assess his claims, The Forum compiled and reviewed all PSC campaign finance records from Cramer, who was first elected in 2004, and Kalk, who was elected in 2008.

The Forum also reviewed all records of PSC campaign donations to Crabtree, his Republican opponent Randy Christmann and Tony Clark, a former commissioner who stepped down this year to take a spot on the Federal Energy Regulatory Commission.

Those donations records were cross-checked against companies that appeared before the commission while the commissioner they gave to was campaigning or in office.

Cramer and Kalk together have collected at least \$57,000 in PSC campaign funds from political action committees and executives of companies that had cases before the board. About two-thirds of that money went to Cramer.

Companies with energy interests, including coal and wind, were among the biggest contributors. Others included telecommunications firms, agriculture companies and power companies.

The commission also oversees pipelines, railroads, auctions, and weights and measures in a variety of capacities.

Political contributors in North Dakota are not required to disclose their employers unless they give \$5,000. They are not required to disclose their identities at all unless they give more than \$200 – meaning the tally of donations tied to industry is understated, unless none of the other donors to either candidate had ties to regulated companies.

There is no upper limit to what contributors in state races can give.

Of the \$104,000 Kalk has raised in PSC campaign contributions large enough to require disclosure, about 17 came from sources he regulates.

For Cramer, who is now running for U.S. Congress, that figure is 24 percent of about \$169,069 in PSC contributions that had to be disclosed.

Kalk also ran for Congress this year, losing to Cramer in the primary. Both men also drew contributions in that race from a handful of regulated sources, totaling a few thousand dollars each.

Kalk and Cramer were not alone in the practice. Clark, the now-departed commissioner, took about \$23,000 from regulated interests in his decade in office.

Susan Wefald, a 16-year former public service commissioner, said she set a personal limit on how much money she would accept from regulated groups to head off insinuations of impropriety.

"I didn't want questions about those," she said.

She declined to say what the limit was.

Wefald, a Republican, declined to comment on the funds raised by current commissioners.

Bruce Hagen, a 39-year former commissioner and a Democrat, was more forthcoming.

"I just think it's wrong," he said. "They may still be making perfectly good, sound decisions. It's just not the wisest thing to have."

A pledge for reform

Neither Kalk nor Cramer is up for re-election this fall. Their terms do not expire until 2014 and 2016, respectively.

Crabtree, who is running for the seat vacated by Clark, has likened their fundraising tactics to bribery. He has vowed to seek reforms like more frequent and more thorough disclosure requirements, and a rule that would require commissioners to recuse themselves from any decision involving a company tied to a donation.

"If that were the law today," he said, "Kevin Cramer and Brian Kalk could scarcely function as public service commissioners."

Crabtree also has pledged not to accept campaign money from regulated interests.

Last week, the state Republican Party released a list of five names it claimed violated that pledge. Crabtree said only one presented a potential conflict and that he would return the money – \$250 from a Massachusetts businessman – if that turned out to be the case.

Crabtree also ran for the commission in 2010, when he lost to Cramer. In that race, he accepted money from all sources, and estimates he has cost himself \$20,000 in potential contributions this year by not doing so again. He said he decided to forego those contributions in this election to be consistent with his reform goals.

It's difficult to say precisely how much money Crabtree took from regulated companies in 2010 because he took \$70,000 – about half of his fundraising – from the state Democratic Party PAC, which itself draws from a wide range of sources.

He also took about \$20,000 that year from other candidates' PACs. He has not taken money from the Democratic Party PAC this year, though he did accept \$7,309 from U.S. Sen. Kent Conrad's PAC.

Impossible standard?

Crabtree has challenged Christmann, his opponent in the PSC race, to adhere to the same campaign finance standards Crabtree has adopted.

Christmann has not agreed to those terms, saying they're unnecessary and exclude many citizens.

Taken to its logical conclusion, Christmann said, the philosophy would also bar farmers and ranchers from giving to agricultural commissioner candidates, or teachers from giving to gubernatorial hopefuls.

"I just can't imagine where you would ever draw the line," he said. "It's a standard that really can't be met."

He rejected the notion money buys influence. But if it does, he said, then Crabtree – who was once a registered lobbyist for two clean energy groups – is equally beholden to the environmental groups that back him.

About 40 percent of the \$19,700 in campaign contributions Christmann has reported in this race is tied to companies the PSC regulates.

The bulk has come from the PAC of the North Dakota Association of Telecommunications Cooperatives, which represents many companies that appear before the PSC.

Christmann has also been a board member of one of those companies, West River Telecommunications Cooperative, since 1999. Last year, he was paid about \$13,000 for his board work, he said. He said he plans to resign if he wins the election – not because it would be a major conflict of interest but because he doesn't think he'd have time to do both.

The company has sought PSC approval for its dealings on eight separate occasions this year.

Along with Cramer, he also sits on the Lignite Research Council, a private-public partnership that promotes the state's coal industry. The PSC regulates mine permitting and land reclamation.

'A business decision'

Contributions from coal interests to commissioners prompted a lawsuit this year from the Dakota Resource Council and the local chapter of the Sierra Club, who said the money creates a conflict of interest and asked federal regulators to assume oversight of the state. In a separate lawsuit, the Dakota Resource Council accused the commission of not complying with many aspects of federal regulatory law.

Both lawsuits are pending. Cramer said he expects both to be dismissed.

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He said his campaign donors don't ask him for anything other than "a fair shake," and hold no sway over his decisions.

"How many times do you know somebody that discloses bribes on the secretary of state's website?" he said.

Limiting donations from certain groups, he said, amounts to "putting a cap on somebody else's freedom."

Kalk said contributions he gets are a reflection of his values, not a payoff.

"If people want to give you money, it's because they believe in you," he said, borrowing a line from Ronald Reagan.

Robert Wood, an associate professor of political science at the University of North Dakota, said that's what makes it so difficult to measure the effect of campaign contributions: It's hard to say if the values followed the money or the money followed the values.

He said a company probably wouldn't use a campaign contribution to try to secure a quid pro quo decision — anyone seeking to do so would likely use more illicit channels. But companies do use contributions to improve their access to elected officials, he said.

"If someone has given you a fat campaign contribution, you're less likely to ignore them when you want to talk to them," he said.

Ed Bender, executive director for the National Institute on Money in State Politics, said ideology is less important to companies than finding a sympathetic ear with a winner.

"It's a business decision, not a political decision," said Bender, whose Montana-based group tracks the influence of campaign money at the state level.

Regardless of whether the contributions actually work, he said, "it doesn't look good."



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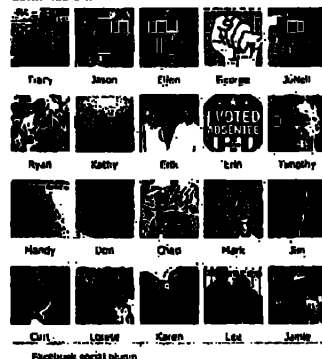
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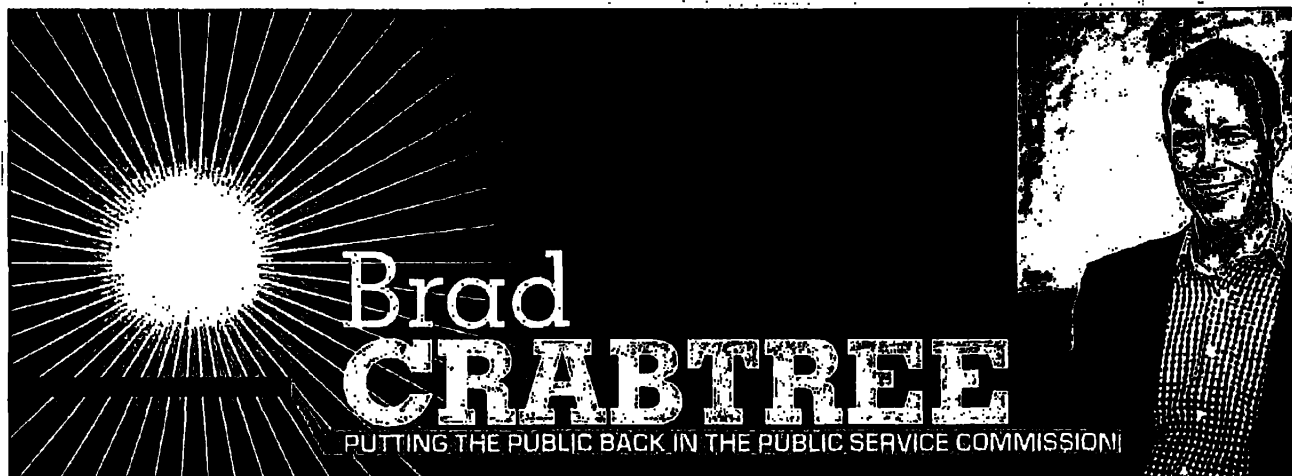
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Crabtree Accuses Public Service Commissioners of Bribery

Post Date August 13, 2012

Comments [0 Comments](#)

Author [bradmj](#)

Category [In The News](#), [PSC Corruption](#)

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Published August 13, 2012, Grand Forks Herald

By Stacie Van Dyke, WDAZ

An Ashley, North Dakota man running for Public Service Commissioner is accusing current commissioners Kevin Cramer and Brian Kalk of bribery.

At a news conference today Brad Crabtree accused both Kalk and Cramer of taking more than 80 thousand dollars in political money from interests they regulate. After calling the contributions 'unethical' and 'possibly illegal' in an opinion article published last Wednesday in the Grand Forks Herald Crabtree was accused in a counter-article of doing the same thing during his campaign. Crabtree has denied the accusations that any of his donations could be considered bribery.

The public service commission is fighting to keep its regulatory duties of the state's coal-mining industry because of the federal lawsuit claiming Cramer and Kalk accepted improper campaign funds.



This post was written by [bradmj](#)

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[Contributors](#)**VIEWPOINT: End 'culture of corruption on PSC'**

Post Date August 08, 2012

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By: Brad Crabtree, Published August 08, 2012

ASHLEY, N.D. — It's wrong for Public Service commissioners to take political money from those they regulate. With energy and agriculture booming in North Dakota, the Public Service Commission makes critical regulatory decisions that affect everyone.

The stakes are high, and our PSC commissioners must be beyond reproach. Yet, since 2004, PSC commissioners Kevin Cramer and Brian Kalk have taken more than \$80,000 in political money from interests they regulate and whose projects they approve.

These contributions are clearly unethical. They may be illegal. At best, Cramer and Kalk have violated the spirit of North Dakota's bribery statute. Their contributions may also violate the letter of the law and deserve to be investigated.

N.D. Century Code 12.1-12-01 stipulates that a Class C felony bribery prosecution requires that a public official receiving a contribution merely have knowledge of a pending or imminent proceeding in which the contributor has an interest, and that the interest of the contributor "could be affected" by the actions of the official receiving the contribution.

Passed in 1973 by a Republican-controlled Legislature, the refreshingly clear language of North Dakota's bribery law reminds us of an earlier era when our legislators had higher expectations of public officials than they do today.

Rather than explain how their contributions do not break the law, Cramer and Kalk cry politics and shoot the messenger. They dismiss two current federal lawsuits over their contributions from coal companies and executives as the political work of environmental activists opposed to coal.

But this is about more than one industry or energy resource. Contributions from coal companies represent just the tip of an unethical iceberg of regulated money from a wide range of industries.

For example, Cramer and Kalk have taken thousands of dollars from wind energy developer, Florida Power & Light (now known as Next Era Energy). FPL/Next Era has routinely come before the PSC for years, seeking approval of its commercial wind farms and related infrastructure.

In one especially troubling case, Cramer accepted three contributions in 2010 from FPL/Next Era's political action committee and executives totaling \$4,800 — at a time when the company had a pending wind energy project that Cramer later voted to approve.

I support the continued development of both our coal and wind energy resources using best technologies and practices. But whether someone prefers fossil fuels or renewables, or supports the development of both, misses the point: Regulators should not accept checks from interests with a direct financial stake in their decisions.

This spring, I made a PSC Commissioner Pledge of Impartiality to refuse any contributions from PACs and individuals representing companies, cooperatives and associations regulated by the PSC.

Unfortunately, Cramer and Kalk's record demonstrates that voluntary actions are not enough. As a PSC commissioner, I will work with legislators from both political parties to accomplish the following:

- Require PSC commissioners to recuse themselves from cases where they have received a contribution(s) from a regulated party that has a material interest in the outcome.
- Require PSC commissioners and candidates to file an additional disclosure form, together with the disclosure report already required of all statewide candidates, that details every contribution received from PACs and individuals regulated by the PSC.
- Establish an additional contribution-reporting period before early voting, so the public can evaluate the integrity of PSC candidates—before they cast their ballots.

These legislative measures are urgently needed and will increase transparency and eliminate conflicts of interests on the PSC, without running afoul of recent U.S. Supreme Court decisions.

It's time to end the culture of corruption on the Public Service Commission.

Crabtree of Ashley, N.D., is a candidate for North Dakota public service commissioner.



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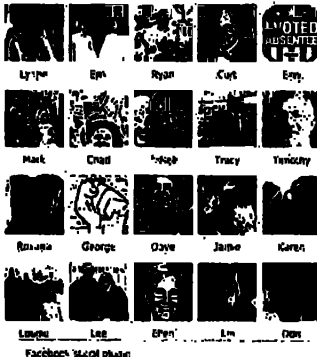
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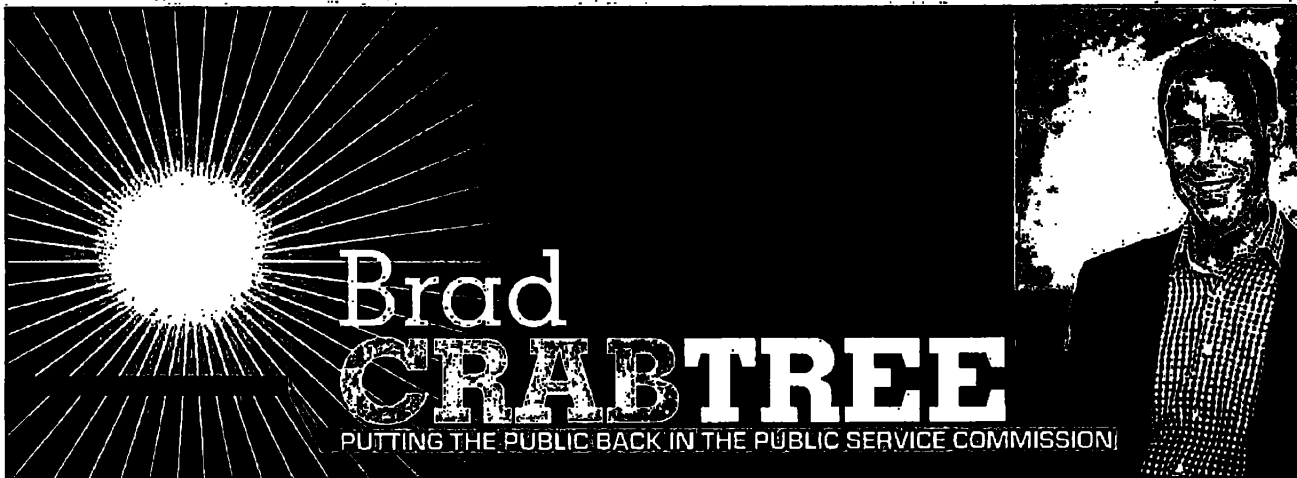
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Press Conference Remarks on ND's Bribery Statute and Recommendations to End Conflicts of Interest on the Public Service Commission

Post Date August 02, 2012

Comments 0 Comments

Author bcrabtree

Category Campaign Statements, PSC Corruption

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August 2, 2012

Bismarck, ND

Good morning. Thank you for joining me.

It's wrong for Public Service Commissioners to take political money from those they regulate. At a time when North Dakota is in the midst of an unprecedented oil boom and our agricultural economy is growing rapidly, the Public Service Commission makes critical regulatory decisions that affect all North Dakotans.

The stakes have never been higher, and our PSC Commissioners and the regulatory process they oversee must be beyond reproach. I've called this press conference because additional steps need to be taken to address blatant financial conflicts of interest on the Public Service Commission.

Earlier in the campaign, I announced my Public Service Commissioner Pledge of Independence, refusing to solicit or accept any contributions from the political action committees of companies, organizations and their associations regulated by the PSC, as well as officers and executives of those institutions. I then called on regulated companies across a wide range of industries to follow the lead of our state's investor-owned utilities and voluntarily stop making political contributions to PSC commissioners and candidates.

However, the record of PSC Commissioners Kevin Cramer and Brian Kalk demonstrates that voluntary steps are not enough. Since 2004 Cramer and Kalk have taken at least \$84,000 in political money from those they directly regulate on the PSC. They accepted this money first for their PSC campaign accounts and then, starting in 2011, they began using their elected regulatory positions as a platform to raise over \$25,000 from companies and executives for their partisan campaigns for the U.S. Congress.

Not only are these contributions improper and unethical, they may well be illegal, and even criminal. Cramer and Kalk's practice of accepting campaign money from PSC-regulated interests has already embroiled them in federal lawsuits over contributions they have taken from the Texas owner of a company with an open coal mining permit application before the Public Service Commission, and for contributions from other coal company political action committees and executives.

But, this is about much more than federal civil lawsuits by environmental groups. I would like to direct your attention to North Dakota's bribery statute passed by the Legislature in 1973.

Let me read for you the relevant statutory language:

Section 12.1-12-01 of the North Dakota Century Code. It is simply entitled "Bribery."

1. "A person is guilty of bribery, a class C felony, if he knowingly . . . solicits, accepts, or agrees to accept from another, a thing of value as consideration for:
 1. The recipient's official action as a public servant; or
 2. The recipient's violation of a known legal duty as a public servant."

Here's where the law gets interesting:

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3. "A prima facie case is established under this section upon proof that the actor knew that a thing of pecuniary value was . . . solicited, accepted, or agreed to be accepted from, a person having an interest in an imminent or pending: a. examination, investigation, arrest, or judicial or administrative proceeding . . . and that interest could be affected by the recipient's performance or nonperformance of his official action or violation of his honest legal duty as a public servant.

It's always refreshing when legislators use plain language, and our North Dakota legislators back in 1973 clearly had higher expectations of their public officials than is the norm today in our state.

Now, let me share just one example where this statute might apply. Since Commissioners Cramer and Kalk have sought to dismiss the current federal lawsuits as merely the political work of environmental activists opposed to the development of coal-based energy, I will use the example of wind energy.

For the record, I support the continued development and use of coal with best practices and new technologies, and I am also a long-standing supporter of wind energy. That said, I do not believe that our Public Service Commissioners should accept political contributions from wind energy developers whose wind farms the PSC must site and approve. That stacks the deck against landowners and local residents who depend on the PSC to implement their interests where wind developers engage in abusive practices.

Let's look at the particular case of our state's largest wind energy developer, Florida Power & Light, now known as Next Era Energy. As you can see from this chart, there is a clear and troubling pattern. Commissioners Cramer and Kalk have routinely accepted campaign contributions from FPL/Next Era Energy's political action committees and executives despite having ongoing cases before the PSC. Ultimately, the Commissioners then made wind farm siting decisions favorable to FPL/Next Era Energy. In one instance, Kevin Cramer even accepted \$4,800 in FPL contributions at a time when the company had an open case before the PSC for approval.

It is worth noting that the North Dakota criminal statute states that a felony bribery prosecution merely requires the knowledge of a pending or imminent proceeding in which the contributor has an interest and the knowledge—by either the contributor, or the public official receiving the contribution—that the decision of the official receiving the contribution could be affected by it.

Let me be clear, I am not an attorney, nor am I a prosecutor or a judge. I leave it to legal professionals to investigate and determine whether actual bribery has occurred under North Dakota law.

However, here's what I am saying: a plain reading of the North Dakota statute makes clear that PSC Commissioners Kevin Cramer and Brian Kalk have violated the spirit of state law by taking extensive political contributions from those they regulate. And the contributions from FPL/Next Era political action committees and executives are just one example that should be investigated.

Regulators operate in a realm where even the perception of conflict of interest matters greatly. Had Commissioners Kevin Cramer and Brian Kalk exercised common sense, ethical judgment in the first place, they would not have harmed the reputation of the Public Service Commission and subjected themselves to serious questions about their compliance with state and federal law.

It's now long past time to end this embarrassing spectacle on the PSC. Since PSC Commissioners Kevin Cramer and Brian Kalk are unable to regulate themselves, I am making recommendations for legislation that will help rebuild the reputation for nonpartisan service and integrity that the Public Service Commission once enjoyed under Commissioners of both political parties, such as former PSC Commissioners Susan Wefald and Bruce Hagen.

Legislative Recommendations to End Financial Conflicts of Interest on the PSC

As an elected PSC Commissioner, I will work with legislators from both political parties to craft legislation to end pervasive financial conflicts of interest on the PSC and to restore the public interest. That legislation will include the following:

Require PSC Commissioners and candidates to file an additional and separate campaign disclosure form with the North Dakota Secretary of State that details every contribution received from PACs and individuals under the regulatory jurisdiction of the PSC, regardless of the level of contributions. The requirement should encompass regulated companies, cooperatives and their associations and the principals, officers and executives of those institutions. Requiring full and separate disclosure of all regulated contributions, in addition to the general disclosure report already required, will not run afoul of recent United States Supreme Court decisions, and it will provide voters and the media an easy way to evaluate the integrity and independence of commissioners and candidates for the PSC. The disclosure requirement will also have the useful effect of encouraging commissioners and candidates to think more carefully about the ethical and political implications of the contributions they solicit.

Require PSC commissioners to recuse themselves from any case in which they have received a contribution(s) from a regulated party that has a material interest in the outcome of the proceeding. While Supreme Court decisions on campaign finance prevent soliciting PSC commissioners and candidates from accepting campaign contributions from a regulated party in advance of a potential conflict, this would protect the public by necessitating a commissioner's recusal in those cases where a contribution has been made and a conflict of interest arises.

Establish an additional reporting period for PSC commissioners and candidates in advance of early voting that occurs 40 days before the general election in November. Under current state law (which was implemented before the advent of early voting), PSC and other statewide candidates must report their contributions first 20 days before the primary election and then once more 20 days before the general election—after thousands of North Dakotans have already voted. This allows candidates to time the contributions they receive to avoid media and voter scrutiny until just days before the election and after increasing numbers of North Dakotans have already made their choice. If our elected PSC commissioners or their opponents choose to take political money from those they regulate, then citizens have the right to know before they start casting their ballots.



This post was written by [Bradman](#)

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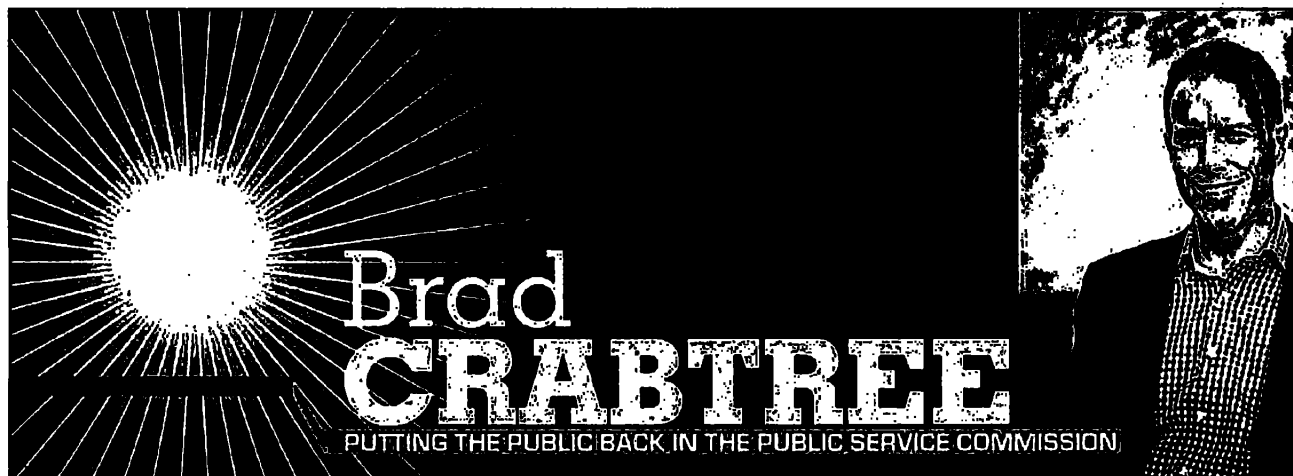
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Crabtree Declares that PSC Commissioners Cramer and Kalk have Violated the Spirit of ND's Bribery Statute

Post Date August 02, 2012

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Crabtree Declares that PSC Commissioners Cramer and Kalk have Violated the Spirit of ND's Bribery Statute and Makes Recommendations for Ending Financial Conflicts of Interest on the PSC

August 2, 2012

(BISMARCK, ND) – ND Public Service Commission candidate Brad Crabtree said today that PSC Commissioners Kevin Cramer and Brian Kalk's taking over \$80,000 in political money from companies and executives they regulate on the PSC violates the spirit of North Dakota's bribery statute.

"Not only are these contributions improper and unethical, they may well be illegal, and even criminal," said Crabtree. "The North Dakota bribery statute states that a felony bribery prosecution merely requires that a public official or contributor have knowledge of a pending or imminent proceeding in which the contributor has an interest and that the decision of the official receiving the contribution could be affected by it," he said.

Crabtree cited as an example the troubling pattern of thousands of dollars in political contributions from North Dakota's largest wind energy developer, Florida Power and Light, now known as Next Era Energy. "Commissioners Cramer and Kalk have routinely accepted campaign contributions from FPL/Next Era Energy's political action committees and executives for years, despite ongoing cases before the PSC," observed Crabtree. "In one instance, Cramer even accepted \$4,800 in FPL contributions at a time when the company had an open case before the PSC for approval."

The Public Service Commission reviews and approves the siting and construction of commercial wind farms and associated infrastructure.

Noting that Cramer and Kalk already find themselves embroiled in two federal lawsuits over contributions they accepted from regulated coal companies and their executives, Crabtree emphasized that regulators operate in a realm where even the perception of conflict of interest matters greatly. "Had Commissioners Kevin Cramer and Brian Kalk exercised commonsense, ethical judgment in the first place, they would not have harmed the reputation of the Public Service Commission and subjected themselves to serious questions about their compliance with state and federal law," he said.

Stating that voluntary measures are not enough to end blatant financial conflicts of interest on the PSC, Crabtree committed to work as an elected PSC Commissioner with legislators from both political parties to craft reform legislation with three key components:

- Require that PSC commissioners and candidates file a separate campaign disclosure form with the ND Secretary of State detailing every contribution received from political action committees and individuals under the regulatory jurisdiction of the PSC, regardless of the level of those contributions;
- Require that PSC Commissioners recuse themselves from any case in which they have received a contribution(s) from a regulated party that has a material interest in the outcome of the proceeding; and
- Establish an additional reporting period for PSC Commissioners and candidates to disclose their contributions in advance of early voting that occurs 40 days before the general election in November, so voters have that information before they begin casting their ballots.

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Democrat PSC candidate claims bribery law flouted

Post Date August 02, 2012

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Author [badmin](#)

Category [In The News](#), [PSC Corruption](#)

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BISMARCK, N.D. — Two Republican public service commissioners are “flouting the spirit” of North Dakota’s anti-bribery law by accepting campaign contributions from industries they regulate, a Democratic candidate for the board claims.



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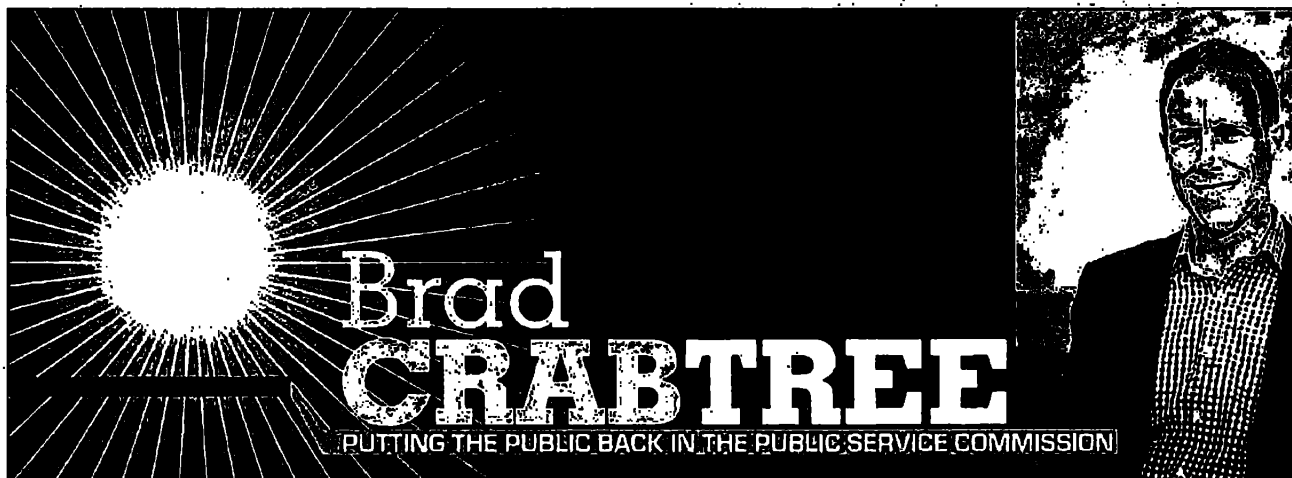
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The PSC's Kevin Cramer doesn't see corruption

Post Date July 27, 2012

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Authorbcrabtree

CategoryEditorials & Opinions, PSC Corruption

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The Fargo Forum

By: Barry Nelson, Fargo, Published July 27, 2012

Is it any wonder that people are disillusioned with our political process here in the U.S.? When someone who is elected to our regulatory agency, the Public Service Commission, boasts of the donations he receives from an industry he is elected to watch, does it instill trust? Is there anyone out there who can help build back our trust?

The recent Forum article ("Review shows state's Republicans benefiting more from oil and gas contributions than Democrats," July 15th) shows that Public Service Commissioner Kevin Cramer is actively selling himself as someone in a position of influence based on collusion with oil industry executives for campaign cash. That said, our Public Service Commission and our political system is in real trouble.

It's obvious that Cramer fails to understand that the PSC is a regulatory position, not a legislative one. With our state's energy economy booming, this serious misconception has a real impact on landowners, communities and others affected by PSC decisions. How would you feel if you went before a judge, only to see that the other side had just given him a stack of cash? Would you trust that judge to be impartial? Of course not. It's time to reform the PSC to work for North Dakotans, not out-of-state special interests.

Brad Crabtree has made clear from day one that neither he nor the office of the PSC will be for sale when he is elected in November. Crabtree has already pledged to not take money from companies and executives with business before the PSC. That says a lot about the kind of ethical leader he will be for our state.

We need to clean up corruption on the PSC. Crabtree can help turn around this political process that feeds our disillusionment. Crabtree will have my vote in November.



This post was written by [bcrabtree](#)

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Published May 02, 2012, 06:42 PM

ND Public Service Commission candidate Crabtree avoiding conflict of interest donations

Fargo, ND (WDAY TV) - Public Service Commission candidate Brad Crabtree is pledging not to solicit or accept any contributions from companies regulated by the North Dakota PSC.

By: WDAY Staff Reports, WDAY



Public Service Commission candidate Brad Crabtree is pledging not to solicit or accept any contributions from companies regulated by the North Dakota PSC. Crabtree says accepting contributions from any individual, company, or industry creates several conflicts of interest. Crabtree hopes his opponents will follow his direction, as well as more companies.

Brad Crabtree - (D) PSC Candidate: "Our commissioners however, have crossed the line, and they have lowered the bar so far that steps need to be taken to restore the reputation of our public service commission. I have taken this voluntary step."

Crabtree has agreed to keep a log of all his contributions on his website. He will be posting these contributions once a month.

Tags: brad crabtree, north dakota, news, politics, updates

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[Contribute](#)**Voluntary Code of Conduct for Regulated Companies: No Political Contributions to PSC Commissioners and Candidates**

Post Date May 02, 2012

Comments [0 Comments](#)Author [bradcrabtree](#)Category [Campaign Statements](#), [PSC Corruption](#)Share [f](#) [t](#) [+](#)

Regulated companies, cooperatives and their associations should follow the example of North Dakota's investor-owned electric and natural gas utilities and voluntarily refuse to make political contributions to Public Service Commissioners and candidates.

A conflict of interest exists when a regulator solicits and accepts political contributions from interests he or she is supposed to regulate. Unlike legislators, Public Service Commissioners are regulators who must make decisions based on the law and evidence. Their decisions determine specific rates charged to consumers and businesses, whether and how particular facilities and projects can be built, and how certain commercial activities are undertaken. PSC Commissioners must be held to a higher standard than legislators regarding campaign contributions: even the perception of a conflict of interest matters.

North Dakota's investor-owned electric and natural gas utilities have long recognized the obvious conflict of interest in making financial contributions to individuals responsible for regulating them. That's why Xcel Energy, Montana-Dakota Utilities and Otter Tail Power voluntarily and consistently decline to make political contributions to Public Service Commissioners and candidates, even though their political action committees (PACs), executives and officers routinely support candidates for other elected offices.

Unfortunately, North Dakota's rules governing campaign contributions to regulators fail to meet this reasonable, commonsense standard set by our state's investor-owned utilities. We should not wait for the legislature or courts to take action to restore independence and integrity to the Public Service Commission. That's why I made my own Public Service Commissioner Pledge of Independence last month committing not to take political contributions from regulated interests, and why I now call on regulated companies, cooperatives and their associations to adopt their own voluntary code of conduct.

The Regulated Money Pipeline to the PSC

Threatened federal legal action has focused public and media attention on contributions to PSC Commissioners Kevin Cramer and Brian Kalk from the principal owner of a company seeking PSC approval of a coal mine permit. However, the Commissioners' conflicts of interest are pervasive and extend well beyond contributions from any one individual, company or industry.

A very preliminary accounting of contributions since 2008 to both Commissioners' PSC campaign accounts from PACs, senior executives, officers and principals representing regulated companies and cooperatives reveals \$62,000 in contributions from the following sources:

- Coal companies;
- Wind energy developers;
- Oil and gas companies with pipeline interests;
- Telecommunications providers;
- Railroads; and
- Generation/transmission and rural electric cooperatives

The Need for a Voluntary Code of Conduct

The right of individuals representing companies, cooperatives, labor unions and other organizations to engage in the political process and financially support candidates of their choice represents a cornerstone of our democracy. However, the scope and scale of recent contributions to commissioners, whether legal or not, have stained the reputation of the PSC and undermined public confidence in the integrity of its decisions.

Mounting public concern and potential legal action against commissioners over political money corrupting the regulatory process create serious reputational risk for honorable companies and individuals. Conflicts of interest also have the potential to create legal and political uncertainty at a time when industry must have confidence in regulatory decisions to make major long-term investments in projects and infrastructure. Adoption of a voluntary code of conduct by regulated companies therefore serves the interests of companies and the public alike.

An energy boom and expanding agricultural economy have increased the scale of the PSC's responsibilities, as well as the consequences of its decisions. The primary role of Commissioners is no longer limited to regulating electricity and natural gas rates of utilities. Billions worth of energy and infrastructure projects now come before the PSC for approval, and large, rapidly growing sectors of our state's economy are fully or partially under the Commission's jurisdiction.

Our legislature now needs to update the rules for political contributions to regulators to protect the public interest as we grow North Dakota's energy and agricultural economy. Meanwhile, our state's regulated companies and their associations can help take the first step by heeding the example of investor-owned utilities and voluntarily ending their political contributions to PSC commissioners and candidates.



This post was written by [badmin](#)

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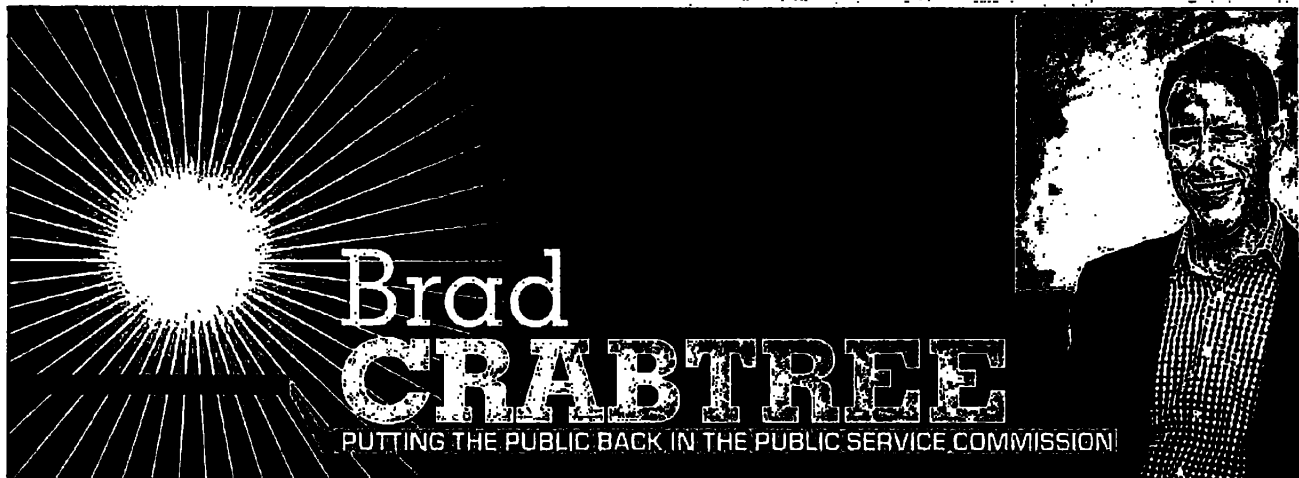
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Crabtree Calls on PSC Regulated Entities to End Campaign Contributions.

Post Date: May 02, 2012

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Author: [bradcrabtree](#)

Category: [Press Releases](#), [PSC Corruption](#)

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May 2, 2012

FARGO – Public Service Commission candidate Brad Crabtree is calling on companies, cooperatives and associations regulated by the Public Service Commission (PSC) to voluntarily stop making political contributions to PSC commissioners and candidates.

Crabtree says that North Dakota's investor-owned electric and natural gas utilities have long recognized the conflict of interest, and they refrain from making political contributions to Public Service Commissioners or candidates for the office.

"The reality is that a conflict of interest exists when a state regulator solicits and accepts political contributions from those he or she is supposed to regulate," said Crabtree, who made his own campaign pledge of independence from campaign contributions from PSC regulated entities in April.

Unlike legislators, Public Service Commissioners are required to make decisions based on the law and evidence.

"PSC decisions determine specific rates charged to consumers and businesses, whether and how particular facilities and projects can be built, and how certain commercial activities are undertaken," Crabtree said, noting that even the perception of a conflict of interest matters.

Crabtree says that mounting public concern and potential legal action against commissioners over political money corrupting the regulatory process create serious reputational risk for honorable companies and individuals. Groups have threatened federal legal action relating to contributions received by PSC Commissioners Kevin Cramer and Brian Kalk from a principal owner of a company seeking PSC approval of a coal mine permit.

However, a preliminary accounting of contributions since 2008 reveals that the two commissioners' conflicts of interest extend well beyond any one individual, company or industry. Political action committees, senior executives, officers and principals representing regulated companies and cooperatives have made \$62,000 in contributions to Cramer and Kalk. These include coal companies; wind energy developers; oil and gas companies with pipeline interests; telecommunications providers; railroads; and generation/transmission and rural electric cooperatives.

Crabtree says that a voluntary decision by regulated entities to refrain from making political contributions to PSC commissioners and candidates would be a 'good first step', but the state legislature should also make changes to the state's campaign finance laws.

"Our legislature now needs to update the rules for political contributions to regulators to protect the public interest as we grow North Dakota's energy and agricultural economy," Crabtree concluded.

###

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Candidate for ND Public Service Commission tells utility companies to not give donation to PSC campaign

Post Date May 02, 2012

Comments [0 Comments](#)

Author [beadmin](#)

Category [In This News](#), [PSC Corruption](#)

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[Grand Forks Herald](#)

By: Associated Press, Published May 02, 2012.

FARGO — The Democratic candidate for North Dakota's Public Service Commission says businesses that the commission regulates shouldn't give money to this year's PSC campaign.

Brad Crabtree says he's already promised not to take money from companies that the commission regulates. They include electric and gas utilities, coal and wind power companies, pipelines and auctioneers.

On Wednesday Crabtree said he was asking companies not to contribute to commission races at all. That would close off campaign money for Republican PSC candidate Randy Christmann.

Crabtree says it's a conflict of interest for companies that are regulated by the PSC to make political donations to commission candidates.

He says the political action committees of Otter Tail Power Co., Montana-Dakota Utilities Co. and Xcel Energy already refuse to donate to state regulatory campaigns.



This post was written by [beadmin](#)

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Published May 02, 2012, 08:42 PM

ND Public Service Commission candidate Crabtree avoiding conflict of interest donations

Fargo, ND (WDAY TV) - Public Service Commission candidate Brad Crabtree is pledging not to solicit or accept any contributions from companies regulated by the North Dakota PSC.

By WDAY Staff Reports, WDAY



Public Service Commission candidate Brad Crabtree is pledging not to solicit or accept any contributions from companies regulated by the North Dakota PSC. Crabtree says accepting contributions from any individual, company, or industry creates several conflicts of interest. Crabtree hopes his opponents will follow his direction, as well as more companies.

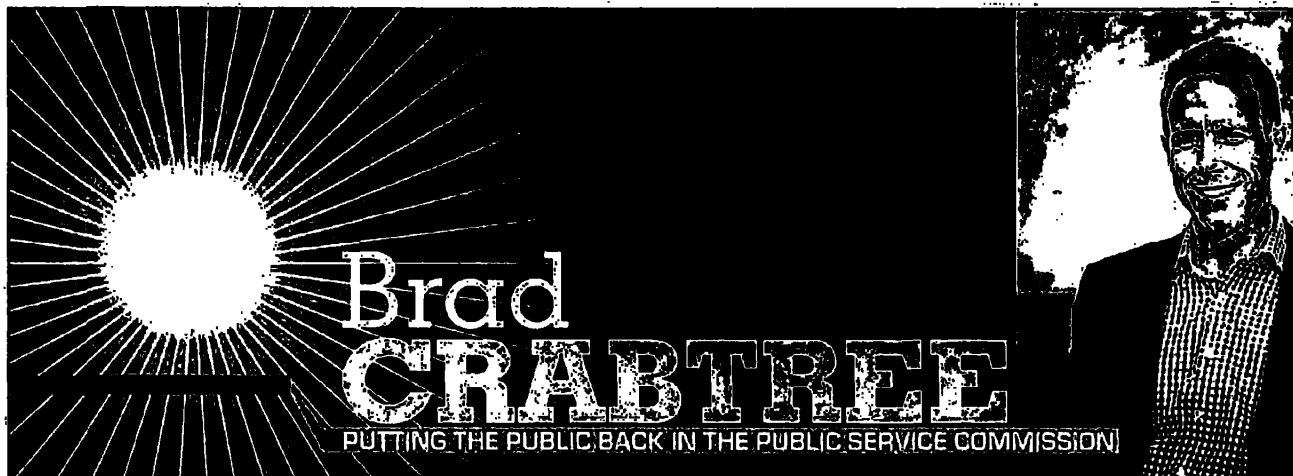
Brad Crabtree - (D) PSC Candidate: "Our commissioners, however, have crossed the line, and they have lowered the bar so far that steps need to be taken to restore the reputation of our public service commission, I have taken this voluntary step."

Crabtree has agreed to keep a log of all his contributions on his website. He will be posting these contributions once a month.

Tags: brad crabtree, north dakota, news, politics, updates

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Crabtree Calls for Campaign Contribution 'Pledge of Independence'

Post Date April 11, 2012

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BISMARCK – Public Service Commission candidate Brad Crabtree is asking his opponent to join him in committing to a "Public Service Commissioner Pledge of Independence" – declining to receive campaign contributions from political action committees (PACs), executives and principals affiliated with companies and cooperatives regulated by the Public Service Commission (PSC).

"I am formally committing myself to a 'Public Service Commissioner Pledge of Independence' to avoid conflicts of interest and to restore public confidence and integrity in the Public Service Commission – and I call on my opponent to do the same," Crabtree said at a press conference today.

Campaign disclosure reports from the past few years reveal that PSC commissioners have received tens of thousands of dollars from PACs, executives and principals of wind energy developers, coal companies, oil and gas companies with pipeline interests, telecommunications providers, railroads, and generation and transmission and rural electric cooperatives, all of which come under PSC jurisdiction.

In some cases, commissioners have received large contributions from parties with open cases before the Commission and who have a direct stake in the outcome of those cases.

"Commonsense suggests that elected regulators should refuse political contributions from industries they regulate. Yet, North Dakota Public Service Commissioners routinely take money from the very interests they are supposed to regulate on behalf of our citizens," Crabtree said.

In addition to declining contributions from regulated company and cooperative PACs, the Pledge also calls for refusing contributions from associations whose members come under the PSC's regulatory jurisdiction and from principals, officers and senior executives of those regulated companies, cooperatives and associations.

Crabtree plans to post contributions to his campaign website on a monthly basis to allow citizens and media to evaluate his commitment to the Pledge. He will also abide by the pledge as an elected PSC Commissioner.

Under North Dakota's existing campaign finance laws, contributions from regulated sectors to Public Service Commissioners and Public Service Commission candidates are allowed, with the public reporting deadline for those donations coming just days before the general election and after many North Dakotans have already voted by absentee or mail-in ballots.

"As regulators, PSC Commissioners must be held to a higher standard than other elected officials regarding sources of campaign contributions and limits on the monetary value of those contributions. The reason is clear: in a regulatory proceeding, even the perception of a conflict of interest matters," Crabtree concluded.

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PSC Candidate to Refuse Contributions with Ties to Regulations[Recommend](#) | Be the first of your friends to recommend this.

Posted: Apr 11, 2012 11:19 AM CDT

By Donnell Preskey, Assistant News Director - email



Brad Crabtree

Bismarck, ND - A Public Service candidate says getting campaign contributions from companies or owners regulated by the state agency is unacceptable.

Democrat Brad Crabtree says he will reject campaign donations from political action committees of companies and cooperatives regulated by the PSC.

He says he also won't accept contributions from officers or executives of regulated companies.

Crabtree has signed a pledge and says he will post his contributions monthly on his campaign website.

He says the state laws regarding campaign contributions for regulators should be tightened.

Crabtree says, "As regulators, PSC Commissioners must be held at a higher standard than other elected officials. The reason for this is clear, in a regulatory proceeding, even the perception of a conflict of interest matters. This legal form of corruption must end."

Republican Candidate for PSC, Randy Christmann, says he will continue to fund raise like he always has.



Randy Christmann

Christmann says he takes contributions from people who support him and his decisions and never commits to do something in return for the money.

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PSC candidate says he'll refuse industry money

Post Date April 12, 2012

Comments: [Comments](#)

Author: [admin](#)

Category: [In The News](#), [PSC Corruption](#)

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Dickinson Press

By Dale Wetzel, Posted April 12, 2012

BISMARCK (AP) — The Democratic candidate for North Dakota's Public Service Commission said Wednesday he will refuse campaign donations from companies the agency regulates, as well as executives who work for the businesses themselves.

Brad Crabtree said accepting money from companies and associations who are directly affected by the agency's decisions undermines public confidence in its work.

"Public service commissioners, as regulators, need to be held to a higher standard than, say, a state legislator or even a state official who is elected," Crabtree said.

"In the regulatory process, the perception of independence, of impartiality, is as important as the reality of it," said Crabtree, who has been critical of the incumbent Republican commissioners' practice of taking campaign contributions from companies they regulate.

He said he intends to restrict his own campaign donations even if his Republican opponent, Hazen state Sen. Randy Christmann, does not.

Christmann said Wednesday he would not go along with Crabtree's proposal. Supporters' agency has not influenced his decisions in the legislature, and it would not on the Public Service Commission, he said.

Crabtree's proposal would still allow him to take contributions he would not otherwise accept if they are first given to the North Dakota Democratic Party or another non-industry group sympathetic to him, Christmann said.

The restrictions, Christmann said, would bar him from accepting campaign support from "hard-working North Dakotans who believe, as I do, that we need to keep our economy moving, and leave a strong economy for the next generation as well."

The Public Service Commission has three Republican members — Chairman Tony Clark and Commissioners Kevin Cramer and Brian Kalk.

Crabtree and Christmann are running to succeed Clark, who is not seeking re-election. Cramer and Kalk are competing for the Republican nomination to run for the U.S. House this fall.

The PSC regulates electric and natural gas utility rates, makes siting decisions for pipelines, coal mines, power plants and wind farms, licenses grain elevators and auctioneers, and oversees the reclamation of former lignite mines in western North Dakota's coal country.

Crabtree's statement Wednesday comes three weeks after two environmental organizations, the Dakota Resources Council and the Dakota Chapter of the Sierra Club, gave notice they intend to sue Kalk and Cramer for alleged conflicts of interest.

The groups object to campaign contributions the two men have accepted from the owner of Great Northern Power Development at Houston. A company subsidiary is developing a new coal mine in southwestern North Dakota.

Environmental groups and some neighbors of the project want the commission to deny the application. A decision is pending.

Crabtree said he did not put similar restrictions on his first PSC campaign two years ago, when he unsuccessfully opposed Cramer's re-election bid. He said doing so would have caused him to refuse between \$5,000 and \$10,000 in donations.

Crabtree raised more than \$201,000 for his 2010 campaign, while Cramer reported almost \$175,000 in contributions, state disclosure filings show.

Among Crabtree's largest donors were North Dakota's Democratic Party, which provided \$70,000 to Crabtree's PSC campaign, and then-U.S. Sen. Byron Dorgan, D-N.D., who chipped in \$10,000 from his own campaign fund.

Crabtree advertised his campaign contribution limits Wednesday as a "pledge of independence," which he said will include monthly reporting of his political donations on his own website. North Dakota law doesn't require frequent reporting of campaign contributions.

Crabtree's self-imposed restrictions would apply to contributions from organizations that often favor Democrats, including rural electric cooperative political action committees and executives.

The rules would also bar him from taking campaign donations from auctioneers, which the commission licenses.

The commission often serves in a judge-like role in ruling on requests from industries the agency regulates, Crabtree said. He compared the commissioners' acceptance of campaign donations from industries they regulate to judges taking contributions from participants in his own cases.

"Because there's no public policy requiring our commissioners to do right, and our commissioners are not disciplining themselves," Crabtree said, "we are seeing a gradual erosion in the integrity of the Public Service Commission."



This post was written by [badmin](#)

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###

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KFYP-TV NEWS STORIES

Crabtree Speaks on Contributions

4/11/2012



One of the candidates for Public Service Commission announced that he will not be accepting campaign contributions that could be viewed as a conflict of interest. Brad Crabtree says he's committing to a PSC Pledge of independence because he believes it's wrong for commissioners to accept money from groups that they regulate.

Last month Kevin Cramer and Brian Kalish were accused of accepting money from frontiers at the South Heart Coal Mining Company.

"Let me be clear, just because something is legal and transparently reported does not make it right. In fact what our commissioners are doing is transparently wrong."

Crabtree says he'll be posting contributions on his website on a monthly basis for anyone who wants to hold him to his pledge. He's asking his opponent Randy Clumhann to do the same.

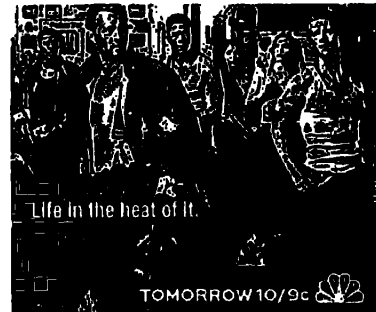
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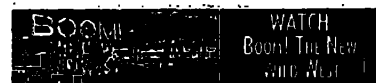
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Exhibit "3"

TITLE 12.1 Criminal Code
CHAPTER 12.1-12 Bribery -- Unlawful Influence of Public Servants

Go to the North Dakota Code Archive Directory

N.D. Cent. Code, § 12.1-12-01 (2012)

12.1-12-01. Bribery.

1. A person is guilty of bribery, a class C felony, if he knowingly offers, gives, or agrees to give to another, or solicits, accepts, or agrees to accept from another, a thing of value as consideration for:

- a. The recipient's official action as a public servant; or
- b. The recipient's violation of a known legal duty as a public servant.

2. It is no defense to a prosecution under this section that a recipient was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

3. A prima facie case is established under this section upon proof that the actor knew that a thing of pecuniary value was offered, given, or agreed to be given by, or solicited, accepted, or agreed to be accepted from, a person having an interest in an imminent or pending: a. examination, investigation, arrest, or judicial or administrative proceeding; or b. bid, contract, claim, or application, and that interest could be affected by the recipient's performance or nonperformance of his official action or violation of his known legal duty as a public servant.

HISTORY: S.L. 1973, ch. 116, § 12.

NOTES: Cross-References.

Bribery of school official, see *N.D.C.C. § 15-49-11*.

Penalty for class C felony, see *N.D.C.C. § 12.1-32-01*.



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MUR # 6663

NAME OF COUNSEL: David C. Thompson

FIRM: David C. Thompson, P. C.

ADDRESS: 324 Kittson Avenue, P. O. Box 523

Grand Forks, North Dakota 58206-5235

TELEPHONE- OFFICE (701) 775-7012

FAX (701) 775-2520

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/23/12
Date

[Signature]
Respondent/Agent-Signature

Candidate
Title (Treasurer/Candidate/Owner)

NAMED RESPONDENT: Brad Crabtree

Crabtree for Public Service Commissioner

MAILING ADDRESS: P. O. Box 396
(Please Print)

Ellendale, North Dakota 58436-0396

TELEPHONE-HOME

BUSINESS (701) 647-2036

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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**Response to MUR# 6663 and Designation of Counsel
from Crabtree for PSC;
Brad Crabtree; Perry Miller**

by placing a true and correct copy thereof in an envelope addressed to:

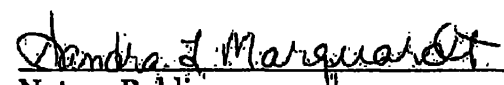
Brad Crabtree	Crabtree for PSC
PO Box 396	PO Box 396
Ellendale, ND 58436-0396	Ellendale, ND 58436-0396
Robert Harms	Perry Miller, Treasurer
ND Republican Party	Crabtree for PSC
PO Box 1917	PO Box 396
Bismarck, ND 58502	Ellendale, ND 58436-0396


Erik A. Escarraman

Subscribed and sworn to before me this 24th day of October, 2012.

(SEAL)

SANDRA L MARQUARDT
Notary Public
State of North Dakota
My Commission Expires Aug. 23, 2018


Notary Public
My Commission Expires: 8/23/18